

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY ELIHU BELL,

Defendant-Appellant.

UNPUBLISHED

August 10, 1999

No. 210683

Genesee Circuit Court

LC No. 92-046688 FH

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,* JJ.

MEMORANDUM.

Defendant appeals of right his sentence of four to fifteen years in prison for probation violation following plea-based convictions of first-degree retail fraud, MCL 750.356c; MSA 28.588(3), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. We affirm.

On May 22, 1992 defendant pleaded guilty to the underlying charges. On June 25, 1992 the court sentenced defendant to five years' probation, with the first year in jail. On March 18, 1996 defendant pleaded guilty to probation violation after leaving Teen Challenge prior to completing the program. On May 8, 1996 the court sentenced defendant to five to fifteen years in prison. Defendant's motion to withdraw his plea was denied.¹ The court granted a motion for resentencing, and on March 3, 1998, resentenced defendant to four to fifteen years in prison, with credit for 1,216 days.

Defendant argues that his sentence is disproportionate. We disagree. The standard of review for a sentence imposed on an habitual offender is abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997). A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). If an habitual offender's underlying criminal history demonstrates that he is unable to conform his conduct to the law, a sentence within the statutory limits does not constitute an abuse of discretion. *Hansford, supra* at 323-324.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant's extensive prior criminal record, including six felony and ten misdemeanor convictions, demonstrates that he is unable to conform his conduct to the law. In addition, he failed to comply with the terms of his probation. Defendant's sentence is within the statutory limits, MCL 769.12(1)(b); MSA 28.1084(1)(b), and does not constitute an abuse of discretion under the circumstances. *Hansford, supra* at 323-324.

Affirmed.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette

¹ That decision is currently on appeal to this Court in Docket No. 213502.